IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2804 OF 2005

Prakash @ Bhalchandra Namdeo Kulkarni ...Petitioner
Vs.
Dattatraya Janardhan Rajbhoj & Anr. ...Respondents

Shri Ajay Ashok Joshi for the Petitioner.
Shri S.G.Deshmukh for the Respondent No.1.
Shri A.S.Shitole, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : AUGUST 18, 2006.

P.C.:

1. The Petitioner is the accused No.1 in a private complaint filed by the first Respondent under sections 500, 501 read with section 34 of the Indian Penal Code, 1860. By the order impugned in this Petition, an Application made by the first Respondent-complainant under section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) has been allowed. By the impugned order, the first Respondent has been allowed to produce an audio cassette and the first Respondent has been recalled for limited purposes of proving the audio cassette and its recording.

2. The learned Counsel appearing for the Petitioner invited my attention to the assertions made

in the private complaint and in the deposition of the first Respondent. He submitted that at no stage the first Respondent disclosed that tape-recording of speeches in the alleged meeting dated 21st March, 1996 was made and that the first Respondent was in possession of the audio cassette of the said tape recording. He submitted that the Application was made at the fag end after recording of statement under section 313 of the said Code. He placed reliance on the decision of the Apex Court in the case of Mohanlal Shamji Soni Vs. Union of India and another reported in AIR 1991 Supreme Court 1346 as well as a decision of the learned single Judge of this court in the case of Fatehsinh Mohansinh Chauhan & Ors. Vs. Union Territory of Dadra and Nagar Haveli & Anr. reported in 2003(4) Maharashtra Law Journal Page 73. He submitted that power under section 311 of the said Code cannot be used for filling up the lacuna left by the prosecution and in such manner which will cause serious prejudice to the defence of the accused. He submitted that the impugned order will give unfair advantage to the first Respondent. He submitted that this was not at all a fit case for exercising power under section 311 of the said Code.

3. I have considered the submissions. The complaint filed by the first Respondent is based on report published in a newspaper on 23rd March, 1996. The said report records the speeches allegedly delivered in a public meeting. Perusal of the deposition of the first Respondent shows that he has referred to a meeting dated 21st Mach, 1996 allegedly held at Shivaji Chowk in Pandharpur. He has stated that in the said meeting the Petitioner-accused made allegations against him and the said allegations have been published in the newspaper report published on 23rd March, 1996. What is sought to be produced by the first Respondent is an audio cassette allegedly containing tape-recorded speeches delivered in alleged meeting dated 21st March, 1996.

4. The power of the court under section 311 of the said Code is very wide. The said power can be exercised at any stage of the proceeding as held by the Apex Court in the case of Mohanlal Shamji Soni (Supra). The Apex Court has observed that it is cardinal rule in the law of evidence that best available evidence should be brought before the court.

The Apex Court observed that it is the duty of a court not only to do justice but also to ensure that justice is being done.

5. In the present case it cannot be said that what transpired in the alleged meeting held on 21st March, 1996 is not relevant for deciding the case. In fact what transpired in the said meeting appears to be the basis of the case of the prosecution. Even though the first Respondent is allowed to produce the audio cassette, the same will have to be proved in accordance with law and the Petitioner will get opportunity to rebut the evidence which is permitted to be produced. Considering all these aspects, no case is made out for interference. The Petition is accordingly dismissed.

JUDGE